

February 10, 2023

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VIA IZIS

Honorable Members of the Board
D.C. Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, D.C. 20001

Re: Applicant's Request for a Two-Year Time Extension on BZA Order 18878

Dear Honorable Members of the Board:

Please accept for filing the enclosed application of Alba 12th Street, LLC (the "Applicant"). The Applicant requests a two-year extension pursuant to 11 DCMR § Y-705.2.

I. Background on Prior BZA Approval

By Order dated September 9, 2015 (the "Order"), the Board approved the application under BZA Case 18878 pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio (§ 1706); rear yard (§ 774); and parking (§ 2101.1) requirements to allow the construction of an office building in the DD/C-2C District at 1017 12th Street NW (Square 316, Lot 821). The Board's decision was subsequently appealed to the Court of Appeals, which tolled the expiration of the Order. The case was remanded on September 29, 2017. Following requested submissions from the Applicant and opposition party, 1101 K Street NW Acquisition LLC, the Board issued a Decision and Order on Remand dated February 11, 2019 (the "Remand Order").

Pursuant to Subtitle Y § 705.7, the Applicant requested a one-year extension to the Remand Order due to the complications from the COVID-19 pandemic, which was subsequently granted by the Board on February 18, 2021 (the "First Extension Order") and set to expire on February 21, 2022. The Zoning Commission then took emergency action to extend the effectiveness of Subtitle Y § 705.7 to apply orders scheduled to expire through June, 30, 2022. *See* Zoning Commission Case No. 20-26B.¹ Prior to the expiration of the First Extension Order, the Applicant applied for a COVID-19 one-year extension, which was granted by the Board on February 27, 2022 (the "Second Extension Order"). The Second Extension Order is set to expire on February 21, 2023. The Applicant now submits this application for a two-year extension pursuant to Subtitle Y § 705.2.

¹ The emergency rule remained valid until April 15, 2021. As noted during the Zoning Commission's hearing on December 16, 2021, Subtitle Y § 705.7 applies to applicant's that have already obtained a prior COVID-19 administrative extension to an order.

II. Compliance with Subtitle Y § 705.2

Pursuant to Subtitle Y § 705.2, the Board has the authority to grant a two-year extension of an order upon finding that the Applicant demonstrates good cause for the extension, and the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application;
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one (1) or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

The Applicant has met the burden pursuant to Subtitle Y § 705.2 to warrant a two-year time extension on the BZA Order as follows.

A. Service on All Parties to the Application

Pursuant to Subtitle Y § 705.2(a), the extension request must be served on all parties to the application, and all parties are allowed thirty days to respond. This extension request is being served simultaneously on Advisory Neighborhood Commission (the "ANC") 2C² and the opposition party, 1101 K Street NW Acquisition LLC. The ANC and 1101 K will be allowed thirty days to respond to this request.

B. No Substantial Change of Any Material Facts

There has been no substantial change to any of the material facts upon which the Board based its approval that would undermine the Board's justification for approving the application. The Project remains the same as reviewed by the Board, including all of the architectural features related to the specific zoning relief requested. The factors satisfying the relief for the Applicant's

² Under the previous Orders, the Property was located in ANC 2F. However, due to the passage of the Advisory Neighborhood Commission Boundaries Act of 2022 passed by the D.C. Council, the Property now lies within the boundaries of ANC 2C. *See* D.C. Law 24-0148.

Property remain the same as well. As such, there have been no substantial changes to any of the material facts relating to the case or the Project.

C. Substantial Evidence of a Good Cause for the Extension

Finally, the Applicant must demonstrate good cause for an extension by meeting one of the three enumerated criteria under Subtitle Y § 705.2.

(c)(1) There is good cause showing an inability to obtain sufficient project financing due to economic and market conditions beyond the Applicant's reasonable control.

Like many others within the D.C. office market, the Applicant has faced many challenges posed by the economic market. Attached at **Tab A** are a few of the many examples showing media coverage of the economic decline in the industry currently, including one study which found record office vacancy rates reaching as high as 19.9%. The shift away from in-office work to remote-work has had a large impact on the office market in the District. Economists project an impending recession which will have additional impacts on the D.C. market as well.

Given the Project is a 10-story, 15,000+ sq. ft., built to suit office building, financing such a project in the current economic market is unreasonable. The market has acknowledged that due to uncertainty around return to office, interest rate increases, and massive negative absorption lending for new office construction has almost completely dried up.

Due to these well-documented and uncontrollable external market conditions, the Applicant requests additional time to secure financing and pursue the intended and approved development of this Project.

(c)(3) There is good cause showing the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

The Applicant has faced multiple challenging circumstances outside of the Applicant's control that have hindered progress toward the development of this Project which constitutes good cause for a two-year extension.

Firstly, the Order was first issued by the Board in 2015. A long, arduous appeals process hampered the Applicant's ability to move forward with the Project. Due to the Appeal delay, an unanticipated result of the appellate process, the Applicant unexpectedly waited two years, but with continued delays beyond its control the Applicant had to pursue a temporary renovation to build out the building in 2017 and subsequently obtained its certificate of occupancy in March of 2018. The build out of the space was completed while the BZA Case continued filings and responses to the procedural order on remand. The Remand Order was issued in 2019 and set to expire in 2021. The Applicant continued to pursue the Project with the intent to see the ultimate Project to fruition.

Then, the COVID-19 pandemic caused complications which led to the Board granting the First Extension Order in 2021. As the pandemic continued and subsequently economic and financial turmoil as well, the Board took emergency action to extend the effectiveness of orders granted and set to expire by June 2022. Therefore, the Board granted the Applicant a Second Extension Order. Unfortunately, as outlined previously, the deteriorating state of the market in the office space industry in the District, coupled with the impending recession has create a challenging and unusual set of circumstances completely outside of the realm of the Applicant's control. Due to the appellate delays and financial challenges of building out a by-right space, the Applicant has shown good cause for the extension. The Applicant has also shown a continued dedication to developing its long term vision for the Property. The Applicant needs additional time to move forward with the intended BZA approved project.

III. Conclusion

The Applicant has met the burden under Subtitle Y § 705.2 for the Board to grant the requested time extension of the BZA Order. Accordingly, the Applicant respectfully requests that the Board do so and extend the validity of the BZA Order for a period of two years. Thank you for your attention to this application.

Sincerely,

COZEN O'CONNOR


Meredith H. Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2023 a copy of the foregoing Request for Extension was served, via electronic mail, on the following:

District of Columbia Office of Planning
1100 4th Street SW, Suite 650E
Washington, D.C. 20024
Planning@dc.gov

Advisory Neighborhood Commission 2C
c/o Kristin Roe, SMD Commissioner
2C04@anc.dc.gov

1101 K Street NW Acquisitions LLC
c/o Cynthia Giordano
1919 Pennsylvania Avenue NW, Ste. 550
Washington, D.C. 20006
Cynthia.giordano@saul.com


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